

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

The Establishment of Policies)
and Service Rules for the Mobile)
Satellite Service in the 2 GHz Band)

TO: The Commission)

IB Docket No. 99-81
DA 00-222

**JOINT SUPPLEMENTAL COMMENTS OF
THE ASSOCIATION FOR MAXIMUM SERVICE TELEVISION, INC. AND
THE NATIONAL ASSOCIATION OF BROADCASTERS**

The Association for Maximum Service Television ("MSTV") and the National Association of Broadcasters ("NAB")¹ (collectively, "Joint Broadcasters") submit these supplemental comments in response to the *Public Notice* issued in this proceeding proposing an alternative, "hybrid" approach to licensing Mobile Satellite Service ("MSS") systems in the 2 GHz spectrum currently utilized for electronic newsgathering ("ENG") activities by Broadcast Auxiliary Service ("BAS") licensees.² As in their earlier reply comments,³ the Joint Broadcasters urge the Commission to ensure that the policies governing the assignment of 2 GHz spectrum to MSS licensees protect the ongoing provision of ENG and other live video services and facilitate a smooth and fair relocation of BAS incumbents to their new, reduced spectrum allocation.

¹ MSTV is a non-profit trade association of local broadcast television stations committed to achieving and maintaining the highest technical quality for the local broadcast system. NAB is a non-profit, incorporated association of radio and television stations and networks that serves and represents the American broadcast industry.

² *The Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band*, IB Docket No. 99-81, Public Notice, DA 00-222 (rel. Feb. 7, 2000) ("*Public Notice*").

³ See Joint Reply Comments of the Association for Maximum Service Television and the National Association of Broadcasters, IB Docket No. 99-81 (July 26, 1999).

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In the *2 GHz Relocation* proceeding, the Commission decided that MSS licensees acquiring spectrum in the 2 GHz band would be required to compensate BAS incumbents for the costs of relocating to new spectrum.⁴ However, the Commission has not yet determined the specifics of how relocation will take place and compensation will be paid.⁵ In the proceeding addressing those issues, the Joint Broadcasters urged the Commission to adopt procedures that will enable the fair, efficient and expeditious relocation of BAS incumbents upon payment of just compensation. The transition plan must honor the flexible sharing arrangement under which all BAS incumbents are licensed for and use all 2 GHz BAS channels *and* must provide BAS incumbents with sufficient certainty and up-front compensation to allow all incumbents to relocate without disrupting the valuable services they provide to the television viewing public.⁶

Because the licensing of 2 GHz spectrum to MSS applicants is closely intertwined with – indeed dependent on – the successful relocation of the BAS incumbents, the Commission

⁴ *Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service*, ET Docket No. 95-18, Memorandum Opinion and Order and Third Notice of Proposed Rulemaking and Order, 13 FCC Rcd 23949, 23958 (1998) ("*2 GHz Relocation MO&O/Third NPRM*"); First Report and Order and Further Notice of Proposed Rule Making, 12 FCC Rcd 7388, 7402 (1997).

⁵ *2 GHz Relocation MO&O/Third NPRM*, 13 FCC Rcd at 23965-69 (seeking comment on how to apply relocation compensation principle to BAS relocation) (NPRM pending).

⁶ See Joint Comments of the Association for Maximum Service Television and the National Association of Broadcasters, ET Docket No. 95-18 (Feb. 3, 1999); Joint Reply Comments of the Association for Maximum Service Television and the National Association of Broadcasters, ET Docket No. 95-18 (Mar. 4, 1999). The principles advanced by the Joint Broadcasters derive from the *Emerging Technologies* proceeding that established the relocation compensation principle. There, the Commission explained that the goal of relocation is to make spectrum available for new services *without materially disrupting or economically burdening the incumbents already using the spectrum to provide valuable services to the public*. See *Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies*, ET Docket No. 97-9, First Report and Order and Third Notice of Proposed Rulemaking, 7 FCC Rd 6886 (1992); Second Report and Order, 8 FCC Rcd 6495 (1993); Third Report and Order and Memorandum Opinion and Order, 8 FCC Rcd 6589 (1993); Memorandum Opinion and Order, 9 FCC Rcd 1943 (1994); Second Memorandum Opinion and Order, 9 FCC Rcd 7797 (1994), *aff'd. by Association of Public Safety Communications Officials – International, Inc. v. FCC*, 7 F.3d 395 (D.C. Cir. 1996).

must take these considerations into account in this proceeding as well. Specifically, the Commission must avoid adopting a MSS licensing scheme that threatens to introduce uncertainty and unfairness into the relocation process and to disrupt the ongoing provision of vital newsgathering services to the public.

The Joint Broadcasters are concerned that the proposal described in the *Public Notice* could do just that. As described, the “hybrid” proposal would allow each MSS operator to select a “home” spectrum segment when it launches its first satellite and would also permit each operator to use spectrum outside its “home” assignment, albeit on a secondary basis to the “home” licensee. This approach is intended to “provide incentives for MSS operators to expedite implementation of their systems” (by linking “home” spectrum selection to system launch) and to “maximiz[e MSS operators’] flexibility during the incumbent relocation process” (by allowing systems to provide service in “any available frequencies” during relocation).⁷

From the perspective of the BAS incumbents, this proposal is potentially problematic in a number of respects. First, the choose-your-own-spectrum aspect of the proposal could create uncertainty in terms of what spectrum incumbents will need to vacate at what time. As explained in the Joint Broadcasters’ comments in the *2 GHz Relocation* proceeding, such sporadic, unpredictable relocation would prevent broadcasters from continuing to make efficient use of the spectrum through the flexible sharing arrangement they currently employ. It would also significantly disrupt service and increase costs by requiring frequent equipment adjustments and depriving equipment manufacturers of reasonably certain parameters, at predictable intervals, to which to design new or modified equipment.

⁷ *Public Notice*, at 2.

Second, the proposal could deprive incumbents of compensation until long after they are expected to vacate the spectrum. BAS licensees are not “homed” on particular channels, but instead use the entire spectrum collectively according to constantly-shifting frequency coordination plans. Therefore, all BAS licensees must relocate from any spectrum to be used for MSS. But if each MSS operator were responsible for paying compensation only as BAS incumbents relocate from its “home” spectrum (even though the operator could occupy and use unassigned spectrum instead of its “home”), there is a risk that BAS incumbents would be required to relocate from unassigned spectrum blocks before any MSS entrant is responsible for compensating for the move. Thus, BAS incumbents could find themselves bearing the costs of relocation without any expectation of their receiving compensation until the cleared spectrum is, if ever, selected by and assigned to a “home” licensee.

Ultimately, it is possible that the hybrid approach (or another of the proposed MSS licensing schemes) could be implemented in a manner that preserves the relocation compensation principle. However, this will only happen if the Commission in this proceeding remains mindful of – and ensures the fair and effective implementation of – the relocation that must take place before MSS entrants can occupy and use the 2 GHz spectrum. Accordingly, the Joint Broadcasters again urge the Commission (1) to refrain from adopting a licensing scheme for 2 GHz MSS until it decides the outstanding relocation issues in the *2 GHz Relocation* proceeding and (2) to ensure that the licensing and service rules it does adopt for 2 GHz MSS preserve and protect the relocation compensation principle that the Commission has already

determined should govern the relocation of BAS licensees currently occupying the spectrum
being made available for MSS.

Respectfully submitted,

NATIONAL ASSOCIATION
OF BROADCASTERS



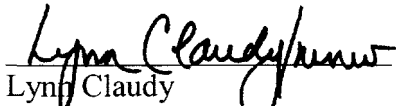
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